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CHARLES ELMORE CROPLEY
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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1942.

No. 592.

ROBERT E. KLEINSCHMIDT,
Petitioner,

vs.

GLOBE-DEMOCRAT PUBLISHING COMPANY, a Corporation,
Respondent.

RESPONDENT'S SUGGESTIONS IN OPPOSITION TO THE PETITION FOR WRIT OF CERTIORARI.

LON O. HOCKER,
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St. Louis Law Printing Co., 415 North Eighth Street. CEntral 4477.

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Summary: *The record does not present a Federal question.*

The petitioner instituted in the State Circuit Court a common-law action for damages growing out of an alleged libelous publication by respondent. The case was tried to a jury, and the verdict was in favor of respondent (Rec. 254).

Petitioner appealed to the Supreme Court of Missouri. That tribunal heard oral arguments of counsel on the merits, took the cause under submission, and thereafter handed down an opinion (Rec. 315-22), pursuant to which the Court dismissed the appeal because of the failure of petitioner's brief (in respects elaborately particularized by

the Court) to comply with the requirements of Rule 15 (set out on page 14 of petitioner's brief).

Thereupon petitioner, in due time, filed his motion for a rehearing (Rec. 323) and undertook, for the first time (see petition, page 5), to bring in a federal question, and did so solely by the words following (Rec. 327):

> "By such dismissal of said appeal the court denied this appellant his right as a citizen to due process of law and to the equal protection of the laws, in violation of the provisions of the Fourteenth Amendment to the Constitution of the United States providing that" (quoting the language of the Amendment).

This constitutes the whole of the attempt to assert a claim of right under the Constitution.

Putting petitioner's case at its strongest, the Supreme Court of Missouri erroneously determined that petitioner had failed to comply with the provisions of Rule 15. But if respondent should concede the existence of such error the concession would not serve the exigency of petitioner's application. For, it is settled that an erroneous decision of a state court construing and applying valid state enactments does not constitute either a denial of due process or a denial of the equal protection of the laws.

American Railway Express Company v. Kentucky, 273 U. S. 269, 273:

> "It is firmly established that a merely erroneous decision given by a state court in the regular course of judicial proceedings does not deprive the unsuccessful party of property without due process of law."

Enterprise Irrigation Dist. v. Canal Co., 243 U. S. 157, 166:

> "The due process clause does not take up the laws of the several States and make all questions pertaining to them constitutional questions, nor does it enable

this court to revise the decisions of the state courts upon questions of state law."

And so likewise:

Central Land Co. v. Laidley, 159 U. S. 103, 112;
Remington Paper Co. v. Watson, 173 U. S. 443, 451;
Brinkerhoff-Faris Trust & Sav. Co. v. Hill, 281 U. S. 673, 680;
Neblett v. Carpenter, 305 U. S. 297, 302.

As to the alleged denial of the equal protection of the laws:

Milwaukee Electric Ry. Co. v. Milwaukee, 252 U. S. 100, 106:

> "But however that may be, the Fourteenth Amendment does not in guaranteeing equal protection of the laws, assure uniformity of judicial decisions, Backus v. Fort Street Union Depot Co., 169 U. S. 557, 569, any more than in guaranteeing due process it assures immunity from judicial error. Central Land Co. v. Laidley, 159 U. S. 103; Tracy v. Ginsberg, 205 U. S. 170."

In the case last cited the Court said (205 U. S., at page 178):

> "Under the opposite view, every judgment of a state court, involving merely the ownership of property, could be brought here for review—a result not to be thought of."

The petitioner's application is insufficient to ground the jurisdiction of this Court and should be denied.

Respectfully submitted,

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January 4, 1943.